GOVERNMENT OF INDIA
COAL AND MINES
LOK SABHA

UNSTARRED QUESTION NO:3222
ANSWERED ON:10.12.2002
FUNDS UNDER VRS IN BALCO
SATYAVRAT CHATURVEDI;SUNDER LAL TIWARI

Will the Minister of COAL AND MINES be pleased to state:

(a) whether the attention of the Government has been drawn to the news-item regarding payment of funds under V.R.S. in ten years in BALCO appearing in the `Rashtriya Sahara` dated 4.8.2002;

(b) if so, the facts of the matter reported therein and the reaction of the Government thereto;

(c) the details of the agreement made between the Government and the concerned company at the time of disinvestment of BALCO; and

(d) the steps taken by the Government to protect the interests of the employees of the company?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COAL AND MINES (SHRI RAVI SHANKAR PRASAD)

(a) & (b) Yes, Sir. The matter is under consideration.

(c) & (d) A Share Holders Agreement (SHA) and Share Purchase Agreement (SPA) was signed between Government of India, M/s Sterlite Industries (India) Ltd. and BALCO at the time of disinvestmenti.e., on 2.3.2001. The details of the SHA & SPA are annexed. The Government has four nominee Directors in the Board of BALCO who oversee that provisions of the agreement, including provisions relating to protection of the interests of the employees of the company, are being adhered to by the new management.

Annexure

Annexure referred to in reply to parts (c) & (d) of Lok Sabha Unstarred Question No. 3222 for answer on 10.12.2002 regarding Funds under VRS in BALCO asked by S/Shri Sunder Lal Tiwari and Satyavrat Chaturvedi.

Details of Share Holders Agreement and Share Purchase Agreement

The important features of the Share Holders and Share Purchase Agreements, signed in regard to the BALCO disinvestment are summarized below:-
1. Share Purchase Agreement(SPA)

(i) The SPA has been executed between Sterlite Industries, the Government and the Company.The SPA provides for the manner in which the payment of the Sale Consideration and transfer of the Purchase Shares was to be conducted.The SPA also provides for the various representations and warranties that were to be provided by each of the Parties and the consequences of breach of any representation.

(ii) The SPA provides for a single stage closing. This implied that the closing of the transaction (payment of price and transfer of shares) was to be undertaken on the date of the execution of the Agreement, unless otherwise agreed to between the parties. At the Closing Date, the Government was required to cause all of its nominee directors (including the full time directors) to resign and five nominees of the Purchaser were to be appointed as additional directors to the board.

(iii) Since the Government is transferring the control and management of the Company to the Purchaser, the working/full time directors of the Company shall be appointed by the Purchaser. As discussed above, at the Closing Date, the Government has to cause its nominee directors (including the full time directors) to resign from the Board of the Company. Since the full time/working directors are under the employment of the Company, this would involve the termination of the employment of such directors. Therefore, the SPA incorporates certain provisions to ensure that the interests of the full-time directors, who were appointed by the Government, are adequately protected.

(iv) The SPA includes an enabling provision whereby the Purchaser may, at its option, choose to re-nominate any or all of the existing working directors as its own nominee(s). The SPA further provides that in the event that any of the full time directors are not

renominated by the Purchaser, the Company shall pay compensation equal to an amount that is the higher of (a) remuneration as provided in the employment contract of such full-time director for 6 months, or (b) remuneration as provided in the employment contract of such full time director for the remaining term of the employment of such full time directors. These provisions have been made for the full time directors since they would not be entitled to VRS and because the protections provided to other employees would not be applicable to them. However, in the event that any of the full-time directors refuse to resign as per the directions of the Government, the Government may dispense with the services of such directors by paying compensation equal to 3 months remuneration as provided in their employment contract.

2. Share Holders Agreement(SHA)

(i) The SHA has been executed along with the SPA but comes into effect only upon Closing.The Shareholders Agreement provides for the manner in which the affairs of the Company are to be carried out in future. The SHA, among other things, provides for the composition of the board of directors, voting agreements, provisions relating to the employees of the Company, restrictions on transferability of the shares and exit options for the Government. Some important aspects are summarized below:-

(ii) The SHA provides for certain key issues for which the Government`s consent would be required before a decision can be taken by the Company. The SHA also provides that the presence of at least one representative or nominee each of the Government and the Purchaser shall be required for any board or shareholders meeting where any such key matter is to be considered. A list of all such matters is provided in Schedule 4.5 of the SHA. Some critical items among these are:

a) Any one or series of transactions which causes a sale, lease, exchange etc. of property or assets of the Company or its subsidiary having an aggregate value exceeding 20% of the total value of the net fixed assets of the Company. This clause has been inserted to prevent asset stripping by the Purchaser.

b) Creation of any Liens on the assets of the Company and granting of any security which in aggregate exceed 100% of the free reserves and the paid-up capital of the Company.

c) After the provisions of the Articles, commence any new line of business, wind up the Company voluntarily etc.

iii) The matters in Schedule 4.5 include all such matters that may have a material impact on the business of the Company. In light of the intention of the Government to vest the management control of the Company with the Purchaser, the matters of day to day business and other operational matters have not been included in the Schedule.

iv) The SHA provides that the Purchaser shall have the majority on the Board of the Company.Immediately after the completion of the sale of 51% equity, the Company shall have 9 directors of which 5 shall be appointed by the Purchaser and 4 shall be appointed by the Government. The SHA provides that the Managing Director shall be appointed from among the nominees of the Purchaser.

v) In regard to transfer of shares, there are following provisions:-

a) Restrictions on the Purchaser: The Purchaser cannot for aperiod of three years from the Closing Date transfer the Shares of the Company to any third party. If the Purchaser proposes to sell its shares after the expiry of the lock-in period, the Purchaser is under an obligation to offer to sell the shares to the Government by way of a right of first refusal at a price at which the Purchaser proposes to sell the Shares. If the Government does not exercise the right of first refusal, the Purchaser may sell the shares to a third party provided that the Government may exercise its option to tag along and require the third party buyer to compulsorily purchase the entire or atleast a prorated portion of the Government shares as well.

b) Restrictions on the Government: There are no lock-in restrictions on the Government`s right to sell its shares.However, as is customary in most sharesholders/joint venture agreement, the Purchaser has a right of first refusal in the event that the Government proposes to sell any or all of its shares. If the Government proposes to sell any or all of the shares held by it, the Government is under an obligation to first offer to sell such shares to the Purchaser at a price at which the Government proposes to sell the Shares.Further, in the event that the Purchaser does not exercise its right to purchase the Government`s shares and if the Government proposes to sell the shares to a third party (other than the public), then as in the case of the Purchaser selling its shares to a third party, the Purchaser shall have the right to tag along with the Government and require the Government to ensure that the buying third party purchases all or a proportionate number of shares of the Purchaser.

c) The SHA provides that in the event that the Purchaser does not buy the shares, under the right of first refusal, the Government may sell its shares to the public by way of an offer for sale. However, at the stage of the proposed sale to public, the Government is under an obligation to offer such number of shares to the Purchaser as would make the aggregate shareholding of the Purchaser equal to 75% + one share of the Company at the price at which the Government proposes to sell the shares to the public.

d) The SHA provides a call option to the Purchaser after the expiry of 3 years from the Closing Date under which the Purchaser can require the Government to sell the entire shares then held by the Government at a price that is the higher of(a) Fair Value of the Shares; or (b) the price at which the 51% stake has been sold pursuant to the SPA along with 14% interest compounded half yearly after providing for dividends declared.

vi) In regard to employee`s interests, there are following provisions:-

a) Recital H states that subject to clause 7.2 the Parties envision that all employees of the Company on the date hereof shall continue in the employment of the Company`. It may be noted that this is a binding provision and is subject to the substantive provisions of the

Agreement (Clause 7.2) which allow for reduction of the work force in the manner as discussed below.

b) Clause 7.2(e): For a period of one year from the Closing Date, the Purchaser cannot retrench any part of the labour force of the Company.

c) Clause 7.2(f) : After one year from the Closing Date, if the strength of the employees is to be reduced, the Company shall offer to the employees, a voluntary retirement scheme on terms that are not less favourable than the VRS offered by the Company prior to the execution of sale.

It may be noted that the above provisions, Clause 7.2(e) and (f), are binding provisions.

d) Clause 5.3 (m) : Notwithstanding any right of first refusal of the Purchaser, the Government may offer upto 5% of the equity of the Company from its own shares to the employees of the Company.

e) The SHA incorporates non-binding recital relating to the numbers of the Scheduled Caste/Schedules Tribes and physically handicapped persons. This provision is on a `best efforts basis` and provides that the Purchaser shall try to provide adequate employment opportunities for such categories and ensure that in the event of any reduction of the work force, the physically handicapped persons shall be retrenched at the end.